IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6172 OF 2005

Sagar Hardware, .. Applicant
Vs
M/s Sanman Constructions, .. Respondent

WITH

CRIMINAL APPLICATION NO.6173 OF 2005

Sagar Hardware, .. Applicant
Vs
M/s Sanman Constructions, .. Respondent

Mr. Manoj Chatage i/b M/s S.D.Dharmadhikari & P.Banerjee, for the applicant.
Mr P.A.Pol, APP for the respondent-State.

CORAM : D.B.BHOSALE, J.

DATED : 13th JUNE, 2006

P.C.:

1. Heard the learned counsel for the parties.

2. These applications are filed by the complainant under section 378 of the Code of Criminal Procedure seeking leave to appeal against the judgment and order dated 5/7/2005, acquitting the respondent-accused of the offence punishable under section 138 of the Negotiable Instruments Act. The amount of cheque was Rs.25,000/-. The trial Court, on appreciation of evidence on record and in particular the evidence of D.Ws 2 and 3, held that the notice required under clause (d) of Section 138 of the Negotiable Instruments Act, was not served on the accused. The respondent-accused in rebuttal stepped

in the witness box and had specifically stated that he was not residing at the cited address on the notice. It appears that the summons was served on the accused on the same address and in view thereof the accused examined D.Ws 2 and 3 to establish that he was not residing at the address cited on the summons and the summons was not served on him. Apart from this, even the other material also shows that the offence under section 138 against the accused has not been established. Considering the reasons recorded by the court below on appreciation of the evidence on record, the impugned judgment cannot be said to be unreasonable and perverse. The view taken by the trial Court is reasonably possible view. In the circumstances, the leave as prayed for cannot be granted. Hence, these applications are rejected.

(D.B.BHOSALE,J.)